

SENATE BILL No. 615

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-8-1-4.5; IC 12-10-11; IC 12-10.5-1-4; IC 12-10.5-1-9; IC 12-10.5-2-2; IC 12-10.5-2-3; P.L.274-2003.

Synopsis: CHOICE board. Adds additional members to, and additional duties for, the community and home options to institutional care for the elderly and disabled (CHOICE) board. Voids rules adopted by the division of disability, aging, and rehabilitative services (DDARS) concerning home and community based services. Requires DDARS to adopt new rules implementing: (1) the caretaker support program; and (2) standards for continuum of care providers; not later than January 1, 2006. Requires DDARS to report to the administrative rules oversight committee on the status of the rules not later than September 1, 2005. Extends certain expiration dates.

Effective: Upon passage; July 1, 2005.

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January 24, 2005, read first time and referred to Committee on Health and Provider Services.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 615

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-8-1-4.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 4.5. (a) The office of the secretary, with the assistance**
4 **of the area agencies on aging, shall develop and implement a**
5 **process to assess the:**

- 6 (1) **personnel;**
7 (2) **funding; and**
8 (3) **case management;**

9 **needs on an annual basis of each division of the office of the**
10 **secretary of family and social services and the needs of local area**
11 **agencies on aging concerning the implementation of IC 12-10-10**
12 **and IC 12-10-11.5.**

13 (b) **The office of the secretary shall report not later than**
14 **December 31 of each year to the legislative council in an electronic**
15 **format under IC 5-14-6 concerning the information determined**
16 **under subsection (a).**

17 (c) **The office of the secretary may hold public hearings for**

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public comment on the information described in subsection (a).

(d) The office of the secretary may not use the information gathered under this section as a justification for not implementing, or delaying the implementation of, statutorily required programs and services.

SECTION 2. IC 12-10-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board consists of the following ~~nine (9)~~ **fifteen (15)** members:

(1) The director of the division of family and children or the director's designee.

(2) The chairman of the Indiana state commission on aging or the chairman's designee.

(3) ~~Two (2)~~ **Three (3)** citizens at least sixty (60) years of age, nominated by ~~one (1)~~ **two (2)** or more of the following organizations: ~~that:~~

(A) represent senior citizens; and

(B) have

(A) The American Association of Retired Persons Indiana.

(B) Indiana Alliance for Retired Americans.

(C) United Senior Action of Indiana.

(D) An organization that has statewide membership that:

(i) consists of; and

(ii) represents;

senior citizens.

(4) One (1) citizen less than sixty (60) years of age nominated by one (1) or more organizations that:

(A) represent individuals with disabilities; and

(B) have statewide membership.

(5) One (1) citizen less than sixty (60) years of age nominated by one (1) or more organizations that:

(A) represent individuals with mental illness; and

(B) have statewide membership.

(6) One (1) provider who provides services under IC 12-10-10.

(7) One (1) licensed physician, nurse, or nurse practitioner who specializes either in the field of gerontology or in the field of disabilities.

(8) ~~One (1)~~ **Two (2)** home care services ~~advocate~~ **advocates** or policy ~~specialist~~ **specialists** nominated by ~~one (1)~~ **two (2)** or more:

(A) organizations;

(B) associations; or

(C) nongovernmental agencies;

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that advocate on behalf of home care consumers, **including an organization listed in subdivision (3) that represents senior citizens or persons with disabilities.**

(9) Two (2) members of the senate who may not be members of the same political party, appointed by the president pro tempore of the senate with the advice of the minority leader of the senate.

(10) Two (2) members of the house of representatives, who may not be members of the same political party, appointed by the speaker of the house of representatives with the advice of the minority leader of the house of representatives.

The members of the board listed in subdivisions (9) and (10) are nonvoting members.

(b) The members of the board designated by subsection (a)(3) through (a)(8) shall be appointed by the governor for terms of two (2) years. In case of a vacancy, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(c) The division shall establish notice and selection procedures to notify the public of the board's nomination process described in this chapter. Information must be distributed through:

- (1) the area agencies on aging; and
- (2) all organizations, associations, and nongovernmental agencies that work with the division on home care issues and programs.

SECTION 3. IC 12-10-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The board shall do the following:

(1) Establish long term goals of the state for the provision of a continuum of care for the elderly and disabled based on the following:

- (A) Individual independence, dignity, and privacy.
- (B) Long term care services that are:
 - (i) integrated, accessible, and responsible; and
 - (ii) available in home and community settings.
- (C) Individual choice in planning and managing long term care.
- (D) Access to an array of long term care services:
 - (i) for an individual to receive care that is appropriate for the individual's needs; and
 - (ii) to enable a case manager to have cost effective alternatives available in the construction of care plans and the delivery of services.
- (E) Long term care services that include home care,

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community based services, assisted living, congregate care, adult foster care, and institutional care.

(F) Maintaining an individual's dignity and self-reliance to protect the fiscal interests of both taxpayers and the state.

(G) Long term care services that are fiscally sound.

(2) Review state policies on community and home care services.

(3) Recommend the adoption of rules under IC 4-22-2.

(4) Recommend legislative changes affecting community and home care services.

(5) Recommend the coordination of the board's activities with the activities of other boards and state agencies concerned with community and home care services.

(6) Evaluate cost effectiveness, quality, scope, and feasibility of a state administered system of community and home care services.

(7) Evaluate programs for financing services to those in need of a continuum of care.

(8) Evaluate state expenditures for community and home care services, taking into account efficiency, consumer choice, competition, and equal access to providers.

(9) Develop policies that support the participation of families and volunteers in meeting the long term care needs of individuals.

(10) Encourage the development of funding for a continuum of care from private resources, including insurance.

(11) Develop a cost of services basis and a program of cost reimbursement for those persons who can pay all or a part of the cost of the services rendered. The division shall use this cost of services basis and program of cost reimbursement in administering IC 12-10-10. The cost of services basis and program of cost reimbursement must include a client cost share formula that:

(A) imposes no charges for an eligible individual whose income does not exceed one hundred fifty percent (150%) of the federal income poverty level; and

(B) does not impose charges for the total cost of services provided to an individual under the community and home options to institutional care for the elderly and disabled program unless the eligible individual's income exceeds three hundred fifty percent (350%) of the federal income poverty level.

The calculation of income for an eligible individual must include the deduction of the individual's medical expenses and the

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medical expenses of the individual's spouse and dependent children who reside in the eligible individual's household.

(12) Establish long term goals for the provision of guardianship services for adults.

(13) Coordinate activities and programs with the activities of other boards and state agencies concerning the provision of guardianship services.

(14) Recommend statutory changes affecting the guardianship of indigent adults.

(15) Review a proposed rule concerning long term care services as required under section 9 of this chapter.

SECTION 4. IC 12-10-11-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) The board shall review a proposed rule concerning long term care services for:**

(1) elderly individuals; or

(2) individuals with disabilities;

at least three (3) months before a proposed rule may be published in the Indiana Register.

(b) A proposed rule described in subsection (a) that is not reviewed by the board:

(1) is void; and

(2) must be withdrawn by the proposing agency.

(c) The board may determine that the proposed rule reviewed by the board under this section should be subject to a public comment period. If the board makes a determination that a public comment period is necessary, the board shall set the:

(1) time;

(2) location; and

(3) format;

of the public comment period for the proposed rule.

(d) After a public hearing, if the board determines that a proposed rule is substantially out of compliance with state law governing home and community based services, the board shall request that the agency proposing the rule modify or withdraw the proposed rule. If a proposed rule is modified under this subsection, the modified rule must be reviewed by the board.

SECTION 5. IC 12-10.5-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) The division of disability, aging, and rehabilitative services established by IC 12-9-1-1 shall administer the caretaker support program established under this chapter.**

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(b) The division of disability, aging, and rehabilitative services shall do the following:

(1) **Subject to section 9 of this chapter**, adopt rules under IC 4-22-2 for the coordination and administration of the caretaker support program.

(2) Administer any money for the caretaker support program that is appropriated by the general assembly.

SECTION 6. IC 12-10.5-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) Before finally adopting a rule under IC 4-22-2 to implement this chapter, the division shall consult with and fully consider any comments submitted by:**

(1) caretakers providing care for a special needs individual under this chapter;

(2) individuals with special needs receiving care from a caretaker under this chapter;

(3) area agencies on aging;

(4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and

(5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

(1) include protections for the rights, safety, and welfare of individuals with special needs receiving care from a caretaker under this chapter;

(2) serve distinct populations, including:

(A) the aged;

(B) persons with developmental disabilities; and

(C) persons with physical disabilities;

in a manner that recognizes, and appropriately responds to, the particular needs of the population;

(3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing costly or unduly burdensome requirements on caretakers or other service providers, including:

(A) requirements for proof of financial responsibility; and

(B) monitoring, enforcement, reporting, or other administrative requirements; and

(4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this

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chapter.

(c) Before submitting a rule adopted under this chapter to the attorney general for final approval under IC 4-22-2-31, the division shall submit to the publisher (as defined in IC 4-22-2-3(f)) for publication in the Indiana Register the division's written response under IC 4-22-2-23 to any comments received from the parties described in subsection (a).

SECTION 7. IC 12-10.5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **Subject to section 3 of this chapter**, the division may adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 8. IC 12-10.5-2-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) **Before finally adopting a rule under IC 4-22-2 to implement this chapter**, the division shall consult with and fully consider any comments submitted by:

- (1) a continuum of care providers providing care under this chapter;
- (2) individuals receiving care under this chapter;
- (3) area agencies on aging;
- (4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and
- (5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

- (1) include protections for the rights, safety, and welfare of individuals receiving care under this chapter;
- (2) serve distinct populations, including:

- (A) the aged;
- (B) persons with developmental disabilities; and
- (C) persons with physical disabilities;

in a manner that recognizes and appropriately responds to the particular needs of the population;

- (3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing costly or unduly burdensome requirements on continuum of care providers or other service providers, including:

- (A) requirements for proof of financial responsibility; and
- (B) monitoring, enforcement, reporting, or other

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1 **administrative requirements; and**
 2 **(4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this**
 3 **chapter.**

4 **(c) Before submitting a rule adopted under this chapter to the**
 5 **attorney general for final approval under IC 4-22-2-31, the division**
 6 **shall submit to the publisher (as defined in IC 4-22-2-3(f)) for**
 7 **publication in the Indiana Register the division's written response**
 8 **under IC 4-22-2-23 to any comments received from the parties**
 9 **described in subsection (a).**

10 SECTION 9. P.L.274-2003, SECTION 7, IS AMENDED TO READ
 11 AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 7. (a) As
 12 used in this SECTION, "board" refers to the community and home
 13 options to institutional care for the elderly and disabled board
 14 established by IC 12-10-11-1.

15 (b) As used in this SECTION, "office" refers to the office of
 16 Medicaid policy and planning established by IC 12-8-6-1.

17 (c) As used in this SECTION, "waiver" refers to the aged and
 18 disabled Medicaid waiver.

19 (d) Before September 1, 2003, the office shall discuss and review
 20 any amendment to the waiver required under this SECTION with the
 21 board.

22 (e) Before October 1, ~~2003~~, **2005**, the office shall apply to the
 23 United States Department of Health and Human Services to amend the
 24 waiver to include in the waiver any service that is offered under the
 25 community and home options to institutional care for the elderly and
 26 disabled (CHOICE) program established by IC 12-10-10-6. A service
 27 provided under this subsection may not be more restrictive than the
 28 corresponding service provided under IC 12-10-10.

29 (f) The office may not implement the waiver until the office files an
 30 affidavit with the governor attesting that the amendment to the waiver
 31 applied for under this SECTION is in effect. The office shall file the
 32 affidavit under this subsection not later than five (5) days after the
 33 office is notified that the waiver is approved.

34 (g) If the office receives approval for the amendment to the waiver
 35 under this SECTION from the United States Department of Health and
 36 Human Services and the governor receives the affidavit filed under
 37 subsection (f), the office shall implement the waiver not more than
 38 sixty (60) days after the governor receives the affidavit.

39 (h) Before January 1, ~~2004~~, **2006**, the office shall meet with the
 40 board to discuss any changes to other state Medicaid waivers that are
 41 necessary to provide services that may not be more restrictive than the
 42 services provided under the CHOICE program. The office shall

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1 recommend the changes determined necessary by this subsection to the
2 governor.

3 (i) The office may adopt rules under IC 4-22-2 necessary to
4 implement this SECTION.

5 (j) This SECTION expires July 1, ~~2008~~ **2010**.

6 SECTION 10. P.L.274-2003, SECTION 8, IS AMENDED TO
7 READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION

8 8. (a) As used in this SECTION, "office" refers to the office of
9 Medicaid policy and planning established by IC 12-8-6-1.

10 (b) As used in this SECTION, "waiver" refers to a Medicaid waiver
11 approved by the United States Department of Health and Human
12 Services (42 U.S.C. 1396 et seq.).

13 (c) Before September 1, ~~2003~~ **2005**, the office shall seek approval
14 from the United States Department of Health and Human Services to
15 amend the waiver to modify income eligibility requirements to include
16 spousal impoverishment protection provisions under 42 U.S.C. 1396r-5
17 that are at least at the level of the spousal impoverishment protections
18 afforded to individuals who reside in health facilities licensed under
19 IC 16-28. The office also shall seek approval for twenty thousand
20 (20,000) additional waiver slots at no additional cost to the state.

21 (d) The office may not implement the waiver amendments until the
22 office files an affidavit with the governor attesting that the federal
23 waiver amendment applied for under this SECTION is in effect. The
24 office shall file the affidavit under this subsection not later than five (5)
25 days after the office is notified that the waiver amendment is approved.

26 (e) If the United States Department of Health and Human Services
27 approves the waiver amendment requested under this SECTION and
28 the governor receives the affidavit filed under subsection (d), the office
29 shall implement the waiver amendments not more than sixty (60) days
30 after the governor receives the affidavit.

31 (f) The office may adopt rules under IC 4-22-2 necessary to
32 implement this SECTION.

33 (g) This SECTION expires July 1, ~~2008~~ **2010**.

34 SECTION 11. P.L.274-2003, SECTION 10, IS AMENDED TO
35 READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION

36 10. (a) As used in this SECTION, "office" refers to the office of the
37 secretary of family and social services established by IC 12-8-1-1.

38 (b) Before July 1, ~~2004~~ **2006**, the office shall have self-directed
39 care options services available for:

- 40 (1) the community and home options to institutional care for the
- 41 elderly and disabled program established by IC 12-10-10-6; and
- 42 (2) a Medicaid waiver;

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for an eligible individual who chooses self-directed care services.

(c) This SECTION expires December 31, ~~2006~~ **2008**.

SECTION 12. P.L.274-2003, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 12. (a) Before December 31, ~~2003~~ **2005**, the secretary of family and social services (IC 12-8-1-2) shall discuss with the community and home options to institutional care for the elderly and disabled (CHOICE) board established by IC 12-10-11-1, and with any other agency, volunteer, volunteer group, faith based group, or individual that the secretary considers appropriate, the establishment of a system of integrated services, including:

(1) transportation;

(2) housing;

(3) education; and

(4) workforce development;

to enhance the viability and availability of home and community based care.

(b) The secretary shall report to the governor and the budget committee any recommendations for funding these services.

(c) This SECTION expires December 31, ~~2004~~ **2006**.

SECTION 13. P.L.274-2003, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 14. (a) Beginning July 1, 2003, the office of Medicaid policy and planning shall implement a policy that allows the amount of Medicaid funds necessary to provide for services to follow an individual who is transferring from institutional care to Medicaid home and community based care. The amount may not exceed the amount that would have been spent on the individual if the individual had stayed in institutional care.

(b) This SECTION expires July 1, ~~2005~~ **2007**.

SECTION 14. [EFFECTIVE UPON PASSAGE] **460 IAC 1.1 is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this article from the Indiana Administrative Code.**

SECTION 15. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "committee" refers to the administrative rules oversight committee established by IC 2-5-18-4.**

(b) As used in this SECTION, "division" refers to the division of disability, aging, and rehabilitative services established by IC 12-9-1-1.

(c) The division shall adopt rules under IC 4-22-2 to implement IC 12-10.5-1 and IC 12-10.5-2, both as amended by this act, not

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1 later than January 1, 2006.

2 (d) Not later than September 1, 2005, the division shall report
3 to the committee on the division's progress in adopting the rules
4 described in subsection (c).

5 (e) This SECTION expires January 1, 2007.

6 SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The
7 community and home options to institutional care for the elderly
8 and disabled board established by IC 12-10-11-1 shall take the
9 following action concerning P.L.274-2003:

10 (1) Review the implementation of the act by soliciting the
11 input and advice from any person who is knowledgeable about
12 long term care and the implementation of the act.

13 (2) Advise the governor on steps necessary to implement the
14 act.

15 (3) Submit a report to the legislative council and the health
16 finance commission established by IC 2-5-23-3 that contains
17 recommendations concerning implementation of the act. The
18 report must be in an electronic format under IC 5-14-6.

19 (b) This SECTION expires December 31, 2006.

20 SECTION 17. An emergency is declared for this act.

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